



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-65/53236

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Washburn County Dept. of Social Services in regard to medical assistance, a hearing was held on May 16, 2002, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner is entitled to an increase in the asset limit allowed under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Lynette Buttenhoff, ESS
Washburn County Dept Of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Washburn County.

2. The petitioner and her husband have a total of \$106,177.86 in assets. They seek to allocate to the husband all of those assets above the \$2,000 that the petitioner may retain and still be eligible for medical assistance.
3. The petitioner receives \$602 in social security each month. She also receives \$60.12 from a pension each month.
4. The petitioner's spouse receives \$697 in social security each month. He also receives \$96.09 from a pension each month.
5. All of the assets produce income except land in Michigan valued by the county tax assessor at \$672. The land cannot be sold because it is isolated and back taxes are owed on it.
6. The petitioner's assets produce \$515.11 in income each month.
7. The petitioner originally applied for institutional medical assistance in May 2001. That application was denied because her assets exceeded the program's limit and a large portion of them did not produce a regular stream of income. She reapplied on November 14, 2001, which is about three months after her husband moved most of the assets that did not produce regular income into investments that did. That application was also denied because over \$2,000 of the assets did not produce income. The latest application was filed on April 14, 2002.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets greater than \$100,000 but less than \$174,000 to assign one-half of their total assets to the spouse still living in the community. §49.455(6)(b)3, Stats. *MA Handbook*, Appendix §23.4.2. An institutionalized person can have up to \$2,000 in assets, which has the effect of increasing the total assets a couple may retain by that amount. Nevertheless, if the community spouse's income falls short of his needs, he may request through a fair hearing that the asset limit be increased so that more income can be produced. §49.455(8)(d), Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,990 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id.*

The petitioner and his spouse together receive a total income of \$1,970 from their pensions, social security and assets. This is less than the husband's monthly needs allowance. Because husband's income is inadequate, the issue becomes whether they may transfer the assets into his name in order to allow him sufficient income. This is the petitioner's third attempt to allocate assets to her husband. The first two were denied because over \$2,000 of the assets did not produce income. Only resources that generate income can be reallocated at a fair hearing to the community spouse and exempted from the medical assistance asset limit. DHA Decision No. MRA-65/49853, *citing* §49.455(8)(d), Stats.; DHA Final Decisions No. MRA-70/15380 and No. MRA-68/48394. At this time all of the assets except land valued at \$680 produce income. *See Exhibit 1*. Because the land does not produce income it cannot be transferred into the husband's name. However, this does not affect the petitioner's eligibility because even if she cannot allocate it to her husband, her assets remain below medical assistance's \$2,000 asset limit. In addition, the property has no real value because its isolation and the back taxes owed on it make it virtually impossible to sell.

I note that it is unclear exactly when all of the couple's assets other than the land began producing income. Section HFS 103.08 of the Wisconsin Administrative Code provides that "eligibility shall begin

on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application.” The petitioner’s latest application for medical assistance was filed on April 14, 2002, so she could be eligible as early as January 1, 2002 if the assets began producing income by then. If they did not produce income until later, that later date is the date on which she became eligible. I will leave it up to the county worker to determine the date of eligibility. The petitioner’s husband must provide sufficient evidence to the worker to establish this date.

CONCLUSIONS OF LAW

1. The petitioner and her husband require assets in excess of the established asset allowance in order to generate monthly income for the husband at the minimum monthly maintenance needs allowance.
2. All of the assets except the land assessed at \$680 may be allocated to the petitioner’s husband in the MA eligibility determination.
3. The petitioner is not over the asset limit for institutional MA eligibility.

NOW, THEREFORE, it is

ORDERED

That this matter be remanded to the county agency with instructions that within 10 days of the date of this decision it shall find the petitioner eligible for medical assistance. Eligibility shall be retroactive to the later of January 1, 2002 or the date on which all of the couple’s assets except the land in Michigan began producing income.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as “PARTIES IN INTEREST.”

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau Claire, Wisconsin, this 12th day of July, 2002

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
830/MDO